

3-7-84

Subject: LABOR MANAGEMENT RELATIONS PROGRAM - CHANGE

1. PURPOSE. This Page Change transmits revised pages to DOT 3710.4, Labor Management Relations Program, of July 7, 1980.
2. EXPLANATION OF CHANGE. Changes are being made to sections in the Order providing that employees negotiating labor agreements with management are entitled to payment of travel and per diem incurred in connection with such negotiations. The Supreme Court has reversed the holdings of the Federal Labor Relations Authority upon which the changed sections had been based and has ruled that 5 U.S.C. 7131(a) does not mandate such payment: (Bureau of Alcohol, Tobacco and Firearms v. Federal Labor Relations Authority et al., No. 82-799, November 29, 1983). The requirement that such payments be made, therefore, is being removed from the Order.

3. FILING INSTRUCTIONS.

a.	<u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Dated</u>
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	47 and 48	7-7-80	47 and 48	3-7-84

- b. After filing the attached pages, this transmittal should be filed with the Order.

FOR THE SECRETARY OF TRANSPORTATION:



Robert L. Fairman
Assistant Secretary for
Administration

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A —

- 1. Title VII, Federal Service Labor Management Relations, Civil Service Reform Act of 1978.
- 2. Suggested format for reporting labor-management relations statistical information.
- 3. Summary of labor relations coordination/notification requirements.
- 4. Subject matter index for use with DOT Order 3710.

- b. (1) The duty to bargain extends to personnel policies, practices, and matters affecting working conditions unless such policies, practices and matters:
 - (a) relate to political activities prohibited under Subchapter III of Chapter 73, 5 U.S.C.;
 - (b) relate to the classification of any position;
 - (c) are specifically provided by Federal statute;
 - (d) are inconsistent with any Federal law or regulation;
 - (e) are subject to a Government-wide rule or regulation; and
 - (f) are inconsistent with applicable Departmental or primary national subdivision rules or regulations except where the Authority has determined that no compelling need exists for such agency rules or regulations. (See 5 CFR 2424.11)
- (2) Subparagraph (f) above applies to any rule or regulation issued by the Department or issued by any primary national subdivision of the Department, unless a labor organization represents an appropriate unit including not less than a majority of the employees in the Department or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.
- c. Except as provided in Section 4 below, the obligation to bargain does not extend to those matters covered in Chapter III, Section 3b, "Management Rights," Page 20. Before negotiating on any labor organization proposals dealing with those matters covered in 5 U.S.C. 7106(b) (1), the so-called "permissive" areas of bargaining, management representatives should give careful attention to the impact of such proposals on the efficiency and effectiveness of agency operations. Where it is determined that identifiable adverse impacts are not balanced by corresponding benefit to the organization, management representatives should not agree to such proposals. Prior to agreeing to any labor organization proposals dealing with the methods and means by which agency operations are to be conducted, management representatives should consult with their headquarters labor relations office. (See 5 U.S.C. 7106)

d. 29 CFR 1425 contains the regulations of the FMCS issued to fulfill its responsibilities under 5 U.S.C. 7119 to provide services and assistance to Federal agencies and labor organizations in the resolution of negotiation impasses (see Section 5 below). The exclusive representative and the agency may determine appropriate techniques, consistent with the provision of 5 U.S.C. 7119, to assist in any negotiation.

2. NEGOTIATIONS AND OFFICIAL TIME. The time, place and other arrangements for negotiations are matters to be determined by the parties concerned or controlled by applicable provisions of existing negotiated agreements. Management representatives have an obligation to provide exclusively recognized labor organizations with reasonable notice and an opportunity to request to bargain on personnel policies, practices and matters affecting working conditions absent a clear and unmistakable waiver of the right to bargain. This obligation exists with respect to situations where there is no basic agreement and during the term of an existing agreement, including the exercise of procedures and adverse impact negotiations cited in Section 4 below. Employees in the unit representing a labor organization in negotiations shall be authorized official time for such purposes, including attendance at impasse proceedings during the time the employee(s) would otherwise be in a duty status. The number of employees granted official time shall not exceed the number of individuals designated as management negotiators. (See Chapter VII)

! Employees participating for or on behalf of a labor organization in proceedings before the Authority are entitled to official time, travel, and per diem in accordance with 5 CFR 2429.13-14.

3. SUBSEQUENTLY ISSUED RULES AND REGULATIONS. It is an unfair labor practice under 5 U.S.C. ~~7116(a)(7)~~ for management to enforce any Government-wide or agency rule or regulation (other than a rule or regulation implementing Section 2302 of the Act concerning prohibited personnel practices) which is in conflict with any applicable negotiated agreement if the agreement was in effect before the date the rule or regulation was prescribed. Agreements shall be brought into conformance with such Government-wide and applicable Departmental or primary national subdivision rules and regulations at the time the agreement is renewed, extended, or renegotiated,

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CHAPTER VII. STATUS OF EMPLOYEES REPRESENTING
LABOR ORGANIZATIONS AND USE OF GOVERNMENT FACILITIES

1. OFFICIAL TIME.

- a. Official time may not be granted to employees serving as labor organization representatives in connection with any activities performed relating to the internal business of a labor organization. Such activities as solicitation of membership, distribution of literature, campaigning for and elections of labor organization officials, and solicitation or collection of dues must be performed during the time the employee(s) involved is in a nonduty status. In addition, official time should not be granted employees for such activities as attending labor organization meetings, conferences and training sessions except as provided in Paragraph e below.
- b. The granting of official time to employees in appropriate units for the purpose of representing a labor organization for all other labor relations matters covered by the Act is a matter for negotiation between the parties. The amount of time agreed to by the parties shall be reasonable, necessary and in the public interest (see 5 U.S.C. 7131(d)).
- c. In proceedings before the Authority, the Authority determines whether any employee participating for, or on behalf of, a labor organization is authorized official time and travel and per diem for such purposes during the time the employee otherwise would be in work or paid leave status. (See 5 CFR 2429.13)

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- d. Employees who are labor organization representatives may be granted official time to attend union-conducted training sessions where the subject matter is of mutual concern to management as well as the employee in the capacity of a labor organization representative and the management interest will be served by attendance at the training. The training, for example, may involve such matters as statutory and regulatory provisions relating to pay, working conditions, work schedules, employee appeal procedures as well as agency policies and the provisions of negotiated agreements. Where the mutual benefit test is met, official time may be granted for short periods of time--ordinarily not to exceed 8 hours per person each year--that are reasonable under the circumstances.
- e. DOT Order 3720.1, Policies and Procedures for Recording Official Time for Representational Functions, contains further policies and procedures for recording official time granted employee representatives for performing any representational functions.
2. LEAVE FOR REPRESENTATIVES. When the work situation permits, annual leave or leave without pay may be granted to an employee to perform the duties and responsibilities associated with labor organization business for which official time has not been negotiated or authorized. The amount of leave and the time at which it is to be granted for these purposes must be compatible with the employee's official work situation. Leave without pay may be granted to employees to serve as full-time labor organization representatives provided they may be spared from their positions for the amount of time involved and further that absences in such capacity are in the interest of the Government.
3. USE OF GOVERNMENT FACILITIES.
- a. Management has considerable discretion in deciding what facilities and services under its control will be made available for use by employees serving as labor organization representatives. Where there is an exclusive representative, the use of such facilities and services by the labor organization is a matter for negotiation between the parties. Before permitting the use of agency facilities and services, management should consider the following: